

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 557 of 2025

[Arising out of Order dated 26.03.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I in CP (IB)/ 891 (MB)2024]

IN THE MATTER OF:

Bhawani Prasad Mishra

...Appellant

Versus

Armaco Infralinks Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate, Mr. Arun Kathpalia, Sr. Advocate and Mr. Vaibhav Gaggar, Sr. Advocates with Mr. Ayush Puri, Mr. Vishesh Kalra, Ms. Heena Kocchar, Ms. Malavika Chandramouli, Ms. Kanishka Pandey, Mr. Aditya, Advocates.

For Respondents:

**Mr. Krishnendu Datta, Sr. Advocate with Ms. Prachi Johri, Mr. Devashish Chauhan, Ms. Jasleen Singh Sandha, Ms. Neha Agarwal, Advocates for R-1.
Ms. Eshna Kumar, Mr. Harpreet Singh Malhotra, Advocates for R-2.
Mr. Gopal Jain, Sr. Advocate with Mr. Paras Mithal, Mr. Prahar Mithal, Advocates for Intervener. Mr. Gaurav Mitra, Ms. Aishwarya Modi Seth, Advocates for Intervener.**

J U D G M E N T
(25th April, 2025)

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor- 'B.S. Ispat Pvt. Ltd.' has been filed challenging the order dated 26.03.2025 passed

by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I admitting Section 9 application filed by 'Armaco Infralinks Pvt. Ltd.'

2. Brief facts and sequence of the events giving rise to this Appeal are:-

2.1. The Corporate Debtor- 'B.S. Ispat Pvt. Ltd.' is engaged in the business of mining and sale of coal and currently has license to mine coal from the coal fields at Marki Mangli III Mine under which ROM coal is supplied. The Respondent No.1- 'Armaco Infralinks Pvt. Ltd.' approached the Corporate Debtor to supply coal. On 19.03.2021, 'Armaco Infralinks Pvt. Ltd.' deposited advance of Rs. 1 crore with respect to supply of coal. The Respondent No.1 continued to buy coal from the Corporate Debtor of large quantities between April 2021 to September 2022. On 15.09.2022, 'Armaco Infralinks Pvt. Ltd.' issued a delivery order 3,00,000 MT coal at the stipulated price. On 16.09.2022 i.e. next date, a modified delivery order was issued by 'Armaco Infralinks Pvt. Ltd.' to the Corporate Debtor requiring supply of 60,000 MT @ 7,000 MT for total amount of Rs.42,00,00,000/-. The delivery order contains terms and conditions which we shall notice hereinafter. The period of validity of the delivery order was one year from the date of the issue of the delivery order. Corporate Debtor has issued a debit note on 10.07.2023 for Rs.7,52,09,252/- against the rate difference in coal sale for the period from 16.09.2022 to 31.03.2023, although the validity of the delivery order came to an end on 15.09.2023 but parties with their conduct continued to act under the said delivery order. 'Armaco Infralinks Pvt. Ltd.' received the supply of coal till 01.06.2024. On 03.07.2024, e-mail

was sent by one Pawan Rokade to 'Armaco Infralinks Pvt. Ltd.' on balance confirmation as on 30.06.2024. The said e-mail confirmed an amount of Rs.35,58,16,538.06. On 08.08.2024, 'Armaco Infralinks Pvt. Ltd.' wrote to the Corporate Debtor that no coal has been supplied since 01.06.2024. Referring to the e-mail dated 03.07.2024 confirming the balance of Rs.35,58,16,538.06/- and Rs.1,00,00,000/- (security deposit), 'Armaco Infralinks Pvt. Ltd.' requested to refund the monies within seven days. The Corporate Debtor informed them that mining operations are stand stopped due to heavy rains and mine is water logged since the last two months and considering the rainy season mining operations will resume only after 20.09.2024 approximately and on the start of coal production, Corporate Debtor will start dispatch. The Corporate Debtor sent an e-mail dated 26.08.2024 to 'Armaco Infralinks Pvt. Ltd.' with subject "withdrawal and recall of email dated 03.07.2024 sent by Pawan Rokade from the email id accounts@bsilindia.com". By the said e-mail, the Corporate Debtor informed that e-mail dated 03.07.2024 was sent by Pawan Rokade who was neither a competent officer nor authorised representative of B.S.Ispat Limited to communicate on contractual terms on behalf of it. It was pleaded that e-mail dated 03.07.2024 was deceitfully obtained citing urgency and misrepresenting which e-mail was recorded. 'Armaco Infralinks Pvt. Ltd.' after receipt of the said e-mail, on 04.09.2024 at 13:13:45 PM submitted debt information in Form C to the NeSL. On the same day, NeSL sent an e-mail to the Corporate Debtor at 01:15 PM about the information submitted by 'Armaco Infralinks Pvt. Ltd.' and asking the Corporate Debtor to authenticate. Corporate Debtor disputed the outstanding amount claimed

by the Operational Creditor of Rs.35,58,16,538/- and did not authenticate the information. E-mail was sent by the Corporate Debtor on the same day to the NeSL. On 04.09.2024 itself 'Armaco Infralinks Pvt. Ltd.' sent a demand notice in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming operational debt of Rs.35,58,16,538/- giving the details of transaction. Date of default was mentioned as 15.08.2024. The Corporate Debtor on 11.09.2024 replied to the demand notice disputing the liability to pay amount of Rs.35,58,16,538/-. Corporate Debtor by e-mail dated 11.09.2024 has also issued debit note of Rs.18,89,86,562.40/- and it was claimed that credit lying with Corporate Debtor is only Rs.16,68,29,955.66/-. It was stated that the Corporate Debtor is ready and willing to supply coal valued at Rs.16,68,29,955.66/-. By reply to demand notice, notice was given in terms of Section 8(2)(a) of the IBC that there is an existence of a dispute which has been duly authenticated at the National e-Governance Services Limited (NeSL). Reply to demand notice in detail captures the sequence of the events and dispute any liability and pleads that there was dispute between the parties and notice need to be withdrawn. After receipt of the reply to the demand notice, 'Armaco Infralinks Pvt. Ltd.' filed Section 9 application on 16.10.2024. Notice was also issued to the Corporate Debtor who filed reply to the Section 9 application on 18.01.2025. On 17.02.2025, Petition was heard and reserved for orders. On 22.03.2025, Corporate Debtor issued a letter to the 'Armaco Infralinks Pvt. Ltd.' wherein the Corporate Debtor notified 'Armaco Infralinks Pvt. Ltd.' that if the lifting of coal was not commenced within 7 days, 'Armaco Infralinks Pvt. Ltd.' would be liable to

pay demurrages of Rs.10 Lakhs per day for holding the stock at the mine. The Adjudicating Authority vide order dated 26.03.2025 admitted Section 9 application. Challenging the said order dated 26.03.2025, this Appeal has been filed on 02.04.2025. On 07.04.2025 in this Appeal, interim order was passed that “till further orders, no further steps be taken by the Resolution Professional”. In the Company Appeal, intervention was also sought by the applicants claiming to be Operational Creditor.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel appearing for the Appellant, Shri Krishnendu Datta, Learned Counsel appearing for the Respondent No.1, Ms. Eshna Kumar, Learned Counsel for Respondent No.2 and Shri Gopal Jain, Learned Senior Counsel for the Intervener.

4. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant submits that the Corporate Debtor was always ready and willing to supply the coal. It is submitted that the time was never the essence of the contract since delivery order dated 16.09.2022 provided a validity period of one year but Corporate Debtor continued to supply and operational creditor continued to receive the supply even after expiry of one year and according to Operational Creditor itself coal was supplied till 01.06.2024. Thus, both the parties were acting under the delivery order dated 16.09.2022 as if the contract between the parties is continuing. It is submitted that the Corporate Debtor was ready and willing to supply coal after receipt of the e-mail dated 08.08.2024 from Operational Creditor. The Corporate Debtor on 13.08.2024 wrote to ‘Armaco Infralinks Pvt. Ltd.’ that mining operations are stand stopped due to heavy rains and mine is water logged since the last

two months and considering the rainy season mining operations will resume only after 20.09.2024 approximately. It is submitted that the Corporate Debtor having never refused to supply there is no occasion to treat any operational debt due on the Corporate Debtor. There was pre-existing dispute between the parties which is apparent from the e-mail dated 08.08.2024 sent by 'Armaco Infralinks Pvt. Ltd.' to Corporate Debtor and reply sent on 13.08.2024. It is submitted that the decision of the buyer to not take delivery is a clear dispute which needs to be adjudicated and no CIRP can be initiated on such a disputed claim. Counsel for the Appellant submits that the Corporate Debtor being ready and willing in delivering the goods, he is entitled to compensation and loss occasioned by the neglect and refusal of the Respondent No.1 to take delivery of the same. It is submitted that the demand notice dated 04.09.2024 was replied by the Corporate Debtor on 11.09.2024 within 10 days disputing the claim and which reply to demand notice is a notice of dispute within the meaning of Section 9(5)(ii)(d). It is submitted that the Adjudicating Authority has not adverted to the relevant materials on the record and ignoring the existence of dispute has admitted Section 9 application. Counsel for the Appellant submits that reliance by the Adjudicating Authority on judgment of the Hon'ble Supreme Court in "***M/s. Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions (P) Ltd., 2022 SCC OnLine SC 142***" is misplaced since in the said case, contract was terminated, hence, Court held that advance paid shall constitute operational debt but in the present case, contract between the parties being continuing, there is no occasion for operational debt coming into existence.

5. Counsel for the 'Armaco Infralinks Pvt. Ltd.' refuting the submissions of the Counsel for the Appellant submit that account confirmation was sent by e-mail dated 03.07.2024 which cannot be withdrawn by the Corporate Debtor subsequently, admittedly after 01.06.2024, no supply has been made. According to own confirmation given by the Corporate Debtor, amount of Rs.35,58,16,538/- being due. E-mail dated 08.08.2024 has rightly demanded return of the payment within seven days. Advance paid for supply and goods having been asked to be refunded and the Corporate Debtor having failed to refund the amount operational debt has come into existence and the Adjudicating Authority has rightly admitted Section 9 application. It is submitted that the debit note issued by the Appellant on 11.09.2024 and now claiming that only an amount of Rs.16,68,29,955.66/- is due cannot be accepted. Any debit note after issue of demand notice after 04.09.2024 is irrelevant. Existence of dispute has to be there prior to issuance of demand notice and in the present case, neither there was a dispute prior to issuance of demand notice nor any material has been brought on the record to indicate pre-existing dispute. Adjudicating Authority has rightly admitted the application. It is further submitted that the mines from which Corporate Debtor had to supply the coal had already been closed due to Corporate Debtor having not been able to pay the statutory dues. The mining having been closed by the statutory authority by non payment of statutory dues, the submission of the Appellant that Appellant was ready to supply the coal is without any substance. There was no ability of Corporate Debtor to supply the coal, mines itself being closed by statutory authorities. Corporate Debtor having not been able to supply

the coal against the advance amount paid by 'Armaco Infralinks Pvt. Ltd.', 'Armaco Infralinks Pvt. Ltd.' has every right to ask for refund by e-mail dated 08.08.2024. It is submitted that the letter dated 20.02.2025 relied by the Counsel for the Appellant during submission written by Bank of Maharashtra has no relevance it having written in response to the letter of Corporate Debtor dated 18.02.2025 i.e. after reserving of the order on 17.02.2025. Counsel for the Respondent has also referred to letter dated 25.02.2025 issued by Government of Maharashtra, Office of District Collector (Mining Section) addressed to 'Armaco Infralinks Pvt. Ltd.' where it was stated that B.S.Ispat Limited is not eligible to dispatch coal until all outstanding dues are paid in full.

6. Counsel for the IRP submitted that in pursuance of the order dated 26.03.2025, publication was made by the IRP on 27.03.2025 and IRP has received various claims and has received claims from various Operational Creditors.

7. Shri Gopal Jain, Learned Senior Counsel for the Intervenor submitted that the Corporate Debtor is liable for operational debt of other parties also from whom advance payment was taken for supply of the coal. He submits that the claims by other Operational Creditors have also been filed before the IRP in pursuance of the publication issued by the IRP. He submits that the Corporate Debtor is not able to supply coal to various parties in spite of receiving advance payment. He submits that the intervenors are entitled to intervene in the present Appeal.

8. We have considered the submissions of the Counsel for the parties and perused the record.

9. From the submissions of Counsel for the parties and materials on the record, following are questions which need to be answered in this Appeal:-

- (I) Whether validity of the delivery order dated 16.09.2022 being only one year the contract between the parties still continues?
- (II) Whether there was any pre-existing dispute between the parties within the meaning of Sections 8 and 9 of the IBC and application deserved to be rejected?
- (III) Whether the Corporate Debtor has brought sufficient material on the record to indicate that it never refused to supply the coal against advance received from Operational Creditor?

Question No.(I):-

10. The delivery order dated 16.09.2022 has been brought on the record by the Appellant as Annexure A-3. Delivery order was issued for 60,000 MT @7,000 for total amount of Rs.42,00,00,000/-. Terms and Conditions of the Delivery Order is as follows:-

“Terms & Conditions:

Validity- 1 year from the date of issue of the DO

*Material will be supplied from Marki Mangli
III/Majra/Chinora Mine*

*Advance: 30 Crore (Thirty Crores only) as advance to
freeze the price and quantity. This amount will be*

refunded without any interest if we unable to supply the coal.

Transporter: X Mine/ Pit head price.

Price: Price inclusive of all taxes, all government Royalties”

11. The above indicate that the validity of delivery order was from the date issue of delivery order till 15.09.2023. The correspondences between the parties on record indicate even after expiry of period of validity of the delivery order, parties continues to act under the contract and supply was made to ‘Armaco Infralinks Pvt. Ltd.’ up to 01.06.2024. E-mail dated 08.08.2024 sent by ‘Armaco Infralinks Pvt. Ltd.’ to Corporate Debtor which has been brought at Page 83 of the paper book itself contain acknowledgment of ‘Armaco Infralinks Pvt. Ltd.’ that supply of coal was received till 01.06.2024. E-mail dated 08.08.2024 is as follows:

“Dear Sir,

We have requested you on several occasions including our recent meeting on 17.07.2024, that you should resume the supply of coal to our company, as no coal has been supplied to us since 01.06.2024. It has come to our notice now that the mines are inoperative.

We are facing significant losses because of this, as we have borrowed money from banks and private individuals to remit advance monies to you, and we are currently paying interest on those loans only due to your failure to supply coal.

Also, in your email dated 03.07.2024, you confirmed the balance of Rs. 35, 58, 16, 538.06/- and Rs. 1,00,00,000/-

(Security Deposit) of Armaco Infralinks as on 30.06.2024 in your books, with the ledgers sent to us.

Given this situation, we request you to refund our monies within 7 days as confirmed by you.

Thanking you.

Regards,

Gaurav Doshi

Director”

12. Reply to the e-mail dated 08.08.2024 was sent by the Corporate Debtor to ‘Armaco Infralinks Pvt. Ltd.’ on 13.08.2024 which e-mail is as follows:-

“Dear Sir,

We acknowledge your mail and are making sincere efforts to curtail the outstandings at the earliest.

You have been associated with us for a long time and we always valued your Company on priority. But as you are kind enough, the mining operations are stand stopped due to heavy rains and mine is water logged since the last two months and considering the rainy season mining operations will resume only after 20th September approx.

On the start of Coal production, we will intimate you immediately and will start dispatch. Till then it is requested to please bear with us.

*THANKS & REGARDS,
PAWAN ROKADE
B S ISPAT LIMITED,
WARORA”*

13. The e-mail dated 13.08.2024 indicate the statement of Corporate Debtor to supply the coal after 20.09.2024 which indicate that parties were acting under the delivery order as if the period of contract has not come to an end. Thus, by conduct of the parties, the contract was held subsisting and amount advanced by the Operational Creditor supplies were to be made by the Corporate Debtor even after expiry of the validity period of delivery order.

We answer the Question No.(I) accordingly.

Question Nos.(II) & (III):-

14. Question Nos.(II) & (III) being inter-connected are being taken together.

15. The Terms and Conditions of the Delivery Order as extracted above indicate that the delivery order also contained following terms:-

*“Material will be supplied from Marki Mangli III/Majra/Chinora Mine
Advance: 30 Crore (Thirty Crores only) as advance to freeze the price and quantity. This amount will be refunded without any interest if we unable to supply the coal.”*

16. From the sequence of the events noticed above, it is clear that supplies were made by the Corporate Debtor up to 01.06.2024 and it was on 03.07.2024 account confirmation e-mail was sent on behalf of the Corporate Debtor by one Pawan Rokade which e-mail dated 03.07.2024 is as follows:-

“Dear Sir. We herewith confirm that the balances of Armaco as on 30-06-2024 as per our books of accounts is as mentioned below. Ledgers are attached herewith for your reference.

Particulars	Amount	Dr/Cr.
Armaco Infralinks Pvt. Ltd.	35,58,16,538.06	Cr.
Armaco Infralinks Pvt. Ltd.-Sec. Deposit	1,00,00,000.00	Cr.
Armaco logistics Pvt. Ltd.	2,46,57 305.75	Cr.
Armaco Infralinks Pvt. Ltd.-Soonoe Iron	2 56139.96	Cr.

*Regards,
PAWAN ROKADE
B S ISPAT LTD
Village Salory-Yensa,
Post Chinora, Tahsil- Warora,
District- Chandrapur
MS- 442914”*

17. The next e-mail which was sent by ‘Armaco Infralinks Pvt. Ltd.’ to Corporate Debtor was on 08.08.2024 where referring to e-mail dated 03.07.2024, the balance amount Rs.35,58,16,538.06/- was asked to be refunded within seven days. E-mail dated 08.08.2024 demanding the balance amount was replied by Corporate Debtor on 13.08.2024 which e-mail is as follows:-

“Dear Sir,

We acknowledge your mail and are making sincere efforts to curtail the outstandings at the earliest. You have been associated with us for a long time and we always valued your Company on priority. But as you are kind enough, the mining operations are stand stopped due to heavy rains and mine is water logged

since the last two months and considering the rainy season mining operations will resume only after 20th September approx.

On the start of Coal production, we will intimate you immediately and will start dispatch. Till then it is requested to please bear with us.

THANKS & REGARDS,

*PAWAN ROKADE
B S ISPAT LIMITED,
WARORA”*

18. After 13.08.2024 next e-mail which was sent by the Corporate Debtor was on 26.08.2024 by which e-mail dated 03.07.2024 was recalled. The Operational Creditor took further steps which we shall notice hereinafter. The email dated 26.08.2024 is as follows:-

“Dear Sir,

We hereby withdraw and recall the email dated 03.07.2024 sent by Pawan Rokade from the email id accounts@bsilindia.com at 17:04 (05:04 PM) to email id armacoipl@gmail.com along with all the attachments thereto, with immediate effect.

With this email we hereby state and bring to your knowledge and information that Mr. Pawan Rokade, the handler of email id accounts@bsilindia.com is neither a competent officer nor authorized representative of B.S Ispat Limited to communicate on contractual terms on behalf of B.S Ispat Limited with its service providers or contractors. We also state that the contents of the above referred email or the

attachments thereto were in no manner authorised or confirmed by the management of B.S Ispat Limited.

Mr. Pawan Rokade is neither in knowledge of any of the terms of agreement between B.S Ispat Limited and Annaco Infralinks Private Limited nor in knowledge of terms of agreement between B.S Ispat Limited and Armaco Logistics Private Limited.

Furthermore, we also state that at no point of time during the contractual relationship between B.S Ispat Limited and Armaco Infralinks Private Limited or during the contractual relationship between B.S Ispat Limited and Armaco Logistics Private Limited, B.S Ispat Limited has ever agreed that the email id accounts@bsilindia.com would be used for any kind of contractual communications. Hence, any kind of reliance to the above referred email to establish any kind of position of B.S Ispat Limited is not only misconceived but outside the contractual terms agreed by B.S Ispat Limited.

Hence, we deny our liability of any kind on account of communications made from the email id accounts@bsilindia.com.

Upon our internal enquiry, it has been revealed that your accountant Mr. Amol had contacted Mr. Pawan Rokade on 03.07.2024 just a few minutes before the above referred email was sent and deceitfully coerced him by citing urgency and misrepresenting that the Managing Director of B.S Ispat Limited who is busy with some urgent work has asked Mr. Pawan Rokade to send the above referred email on the email id armacoipl@gmail.com.

We also state that neither Armaco Infralinks Private Limited nor Armaco Logistics Private Limited has ever communicated with B.S. Ispat Limited that any contractual communications would be exchanged through the email id armacoipl@gmail.com

We also state that Armaco Logistics Private Limited is now trying to misuse the above referred email to unlawfully enrich itself for the defective service rendered by it as an attempt to circumvent the agreed contractual terms and by taking the support of the above referred email which was obtained deceitfully and by using coercive techniques.

You shall take note of this email and any misuse of the already withdrawn and recalled email dated 03.07.2024 sent by Pawan Rokade from the email id accounts@bsilindia.com at 17:04 (05:04 PM) armacoipl@gmail.com along with all the attachments thereto, will invite strict legal consequences.

*Thanks & Regards,
Sagar Kasangottuwar
VP (Finance & Accounts)
B.S. Ispat Limited”*

19. The above communication sent by the Corporate Debtor clearly stated that e-mail dated 03.07.2024 was sent by Pawan Rokade by misrepresentation and Pawan Rokade was not authorised to communicate on contractual terms. Thus, the confirmation of amount of Rs.35,58,16,538.06/- which was communicated by 03.07.2024 email was withdrawn. The next action which was taken by the Operational Creditor

was sending information to the NeSL. Form C was sent by Operational Creditor as per Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 which was sent on 04.09.2024 at 13:13:45 PM. NeSL sent an e-mail on 04.09.2024 at 01:15 PM to the Corporate Debtor communicating about the financial information submitted and requiring the Corporate Debtor to verify and authenticate the details submitted. The e-mail required the Corporate Debtor “we solicit your early action in the matter within 3 days of its receipt”. E-mail further contains following instructions:-

“On logging on to NeSL IU portal, please go through the details that are appearing in the Computer Screen and verify the same.

- 1. In case you find that entire information furnished is correct, click the ‘Authenticate’ button to confirm that you are accepting all the above details.*
- 2. In case you find any discrepancy or have any dispute about any of the details, please write suitable remarks accordingly in the space allotted in the format and click ‘Authenticate’ button.*
- 3. In the event of your failure to undertake authentication and verification of the Information furnished by your Creditor, the status of authentication of default shall be marked in terms of Regulation 21 of the IBBI (IU) Regulations, 2017”*
When you click 'Authenticate' you are electronically signing the information by affixing your Aadhaar e-Sign or DSC issued in your name.

Further, for any electronic document(s) the submitter may have submitted in support of the information of Default, please verify and authenticate the same

appearing on the screen by affixing your Aadhaar e-Sign on such documents.

In case you need any clarification/support, we would be glad to assist you, please feel free to call us on Toll Free No.1800 599 2345/1800 890 2347.

You can also email us at helpdesk@nesl.co.in.

We solicit your early action in the matter within 3 days of its receipt.”

20. The Corporate Debtor on the same day i.e. 04.09.2024 disputed the information and raised a dispute which is captured by the NeSL record itself. NeSL record is filed as Annexure A8 by the Appellant which record contains following:-

“NATIONAL E-GOVERNANCE SERVICES LIMITED

Record of Financial Information - Form C

Submission Details			
Unique Identifier	Debt	AAUCA0687N_AACCB 266 SH	Submission ID 1
Submitted by		Armaco Infracinks Private Umltd	Submitted Date & Time 04/09/2024 13:13:45
Submission Type		Default	Information as on 04/09/2024

Authentication Status				
Party Name	Relationship	UserId	Status	Date and Time of Authentication
B.S.ISPAT LTD.	Debtor	2701316	Disputed	04/09/2024 17:04:59
Reason for Dispute: Pre-existing Dispute. Remarks- No default has been committed by B S Ispat Limited. Pre-existing dispute exist prior to the issuance of Demand Notice dated 04.09.2024.				

Submitter Information			
Name	Armaco Infracinks Private Limited	UIN (PAN)	AAUCA0687N
Relationship	Creditor	Comm. Address PIN	442401

DOI / DOB	18/09/2020	Mobile No.	9xxxxxxxxx1
Telephone No.	9xxxxxxxx1	Billing/ Comm. Address	OPP AKASHWANI RAGHATATE LAYOUT A164, Chandrapur. CHANDRAPU R, Maharashtra India 442401
Email ID	*****@gmail.com	Email ID- Dispute AXIert	**@gmail.com

Other Part Details			
Debtor			
Name	BS ISPAT LTD.	Relationship	debtor
Regd./ Permanent Address	Khasara No. 97, 101, 190, Village Salon Yesna Post Chinora. Tah. Warora Chandra-our Maharashtra	Regd. Address PIN	442914
Billing Comm. Address	Khasara No. 97, 101, 190, Village Salon Yesna Post Chinora. Tah. Warora Chandra-our Maharashtra	Comm. Address PIN	442914
Legal Constitution	PUBL	CIN/LLPIN	U271 OOMH1999PL C122856
PAN	AACCB2665H	MSME Flag	N
Email ID	bsispatlimited@gmail.com		

Debt Information			
Type of Debt	operational	Debt Reference No.	AACCB2665H
Debt Start Date	03/04/2021	Debt Currency	INR
Sanction Currency	INR	Funded Type	Funded
Security flag	unsecured	Sanctioned Amount	714467365.00
Facility Name	Purchase of Goods Coal	Total Outstanding Amount	355816538.06
Amount Overdue	355816538.06	Principal Outstanding	355816538.06

Account Closed Flag	no		
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Default Details			
Date of Default	15/08/2024	Default Amount	355816538.06
Total Outstanding Amount	355816538		

21. The Operational Creditor on the same day i.e. 04.09.2024 sent demand notice under Section 8(1) through Counsel demanding amount of Rs. 35,58,16,538.06/- and date of default being mentioned as 15.08.2024. In the demand notice also the copy of Form C issued by NeSL containing the record of debt was also annexed. After receipt of the demand notice, Corporate Debtor sent its reply to demand notice on 11.09.2024. Demand notice was denied and the claim was disputed. In paragraphs 2, 3 and 4 of reply to the demand notice, following was pleaded:-

"Through Email and RPAD"

Date: 11.09.2024

To,

*(1) Mr. Pranav Avhad and Ms. Darshna Naval,
164, 16th Floor, Atlanta Building, Nariman Point, Mumbai 21
AND
(2) Armaco Infralinks Private Limited (hereinafter "AIPL", for
brevity),
Opposite Akashwani Raghata Layout A164,
Chandrapur 442401
Maharashtra, India*

Subject: *Reply to Demand Notice in Form 3 dated 04.09.2024 ("Demand Notice") issued by Mr. Pranav Avhad to B.S Ispat Limited under the Insolvency and Bankruptcy Code, 2016 and the rules framed thereunder.*

Madam,

We are in receipt of the abovementioned Demand Notice from you through an email on 04.09.2024. In reply thereto, we have to state as under:

- 1. At the outset, the contents of the Demand Notice under reply are denied, and nothing stated therein should be deemed to be admitted by virtue of not having been specifically denied herein.*
- 2. The Demand Notice issued by you is not only legally untenable but is also factually incorrect and we vehemently deny and dispute our liability to pay the amount of Rs. 35,58,16,538.06/- or any part thereof as incorrectly demanded by you in your Demand Notice under reply. For the reasons elaborated below, it is evident that the Demand Notice is a pressurizing tactic adopted by AIPL to arm-twist us to succumb to your illegal demands.*
- 3. At the outset, we vehemently deny the patently erroneous claim amount of Rs. 35,58,16,538.06/-, inasmuch as, after due and proper reconciliation of accounts, BSIL, has by its email dated 11.09.2024, issued Debit Note of Rs. 18,89,86,562.40/- to AIPL towards the coal already supplied to AIPL. Therefore, the amount of AIPL's credit lying with BSIL is only Rs. 16,68,29,955.66/-, strictly as per the terms of the D.O. dated 16.9.2022 (on the basis of which the present Demand Notice has been sent to BSIL). We are ready and willing to supply coal valued at Rs. 16,68,29,955.66/-.*
- 4. We hereby bring to your notice in terms of Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC", for brevity), that there is an existence of a dispute as has been duly authenticated at the National e-Governance*

Services Limited, the Information Utility (hereinafter "NeSL Information Utility", for brevity). A copy of the Record of Financial Information - Form C in respect of the Debt Information submitted by AIPL indicating the 'Authentication Status' as DISPUTED is annexed herewith as Annexure A."

22. In the reply to the demand notice further detailed pleadings were made with regard to record of financial information in Form C generated by the NeSL Information Utility. It is useful to extract paragraphs 5 & 6 of the reply which is as follows:-

"5. The said Record of Financial Information- Form C has been generated by the NeSL-Information Utility in terms of Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (hereinafter, "Information Utilities Regulations 2017" for short) after giving an opportunity to the BSIL to verify and authenticate the details submitted by the submitter (AIPL) vide its email dated 04.09.2024 at 0 I: 15:46 PM, a copy of the said email is annexed herewith as Annexure B.

6. In the Demand Notice issued to B.S Ispat Limited (hereinafter "BSIL", for brevity) you have purportedly certified and confirmed that "no record of dispute raised in relation to the relevant operational debt has been filed by any person at any information utility", as is evident from the Clause 5 of the Demand Notice at numbered page 14. In order to corroborate your above position you have annexed an UN-AUTHENTICATED 'Record of Financial Information - Form C' generated from NeSL Information Utility as Annexure 11 to the Demand Notice, which was submitted by AIPL only 57

minutes and 15 seconds prior to issuance of the Demand Notice through an email.

At this juncture it is relevant to state the relevant timelines in respect of the submission of the 'Debt Information' by you and the email through which the Demand Notice has been served on the BSIL.

<i>Date</i>	<i>Time</i>	<i>Action</i>
<i>04.09.2024</i>	<i>13:13:45 (01:13:45 PM)</i>	<i>AIPL submits 'Debt Information' at NeSL-Information Utility. (As reflected in Annexure A)</i>
<i>04.09.2024</i>	<i>01: 15:46 01:15:46 PM</i>	<i>Email is received by BSIL from NeSL Information Utility to verify and authenticate the details submitted by the submitter- AIPL. (Annexure B)</i>
<i>04.09.2024</i>	<i>02:12PM</i>	<i>The Demand Notice is served on BSIL through the email of Ms. Darshana Naval darshnanaval10@gmail.com (Annexed herewith as "Annexure C")</i>

In terms of Regulation 21 of the Information Utilities Regulations 2017, the NeSL-Information Utility has stated in its email dated 04.09.2024 (Annexure B) to BSIL that- We solicit your early action in the matter within 3 days of its receipt. BSIL has in conformity with the Regulation 21 and the email dated 04.09.2024 duly raised DISPUTE on 04.09.2024 at 17:04:59 stating, "Reason For Dispute: Pre-existing Dispute, Remarks- No default has been committed by B S lspat Limited, Pre-existing disputes exist prior to the issuance of the Demand Notice dated 04.09.2024." which is evident from the Authenticated Record of Financial Information - Form C annexed as Annexure A."

23. Reply to demand notice also pleads that demand notice was sent by the Operational Creditor within 57 minutes and 15 seconds after debt

submission by 'Armaco Infralinks Pvt. Ltd.' to NeSL and without allowing the NeSL Information Utility to verify and authenticate the details. In paragraphs 7 and 8 again it was pleaded:-

“7. The tearing hurry shown by AIPL in issuing the Demand Notice within 57 minutes and 15 seconds immediately after debt submission by AIPL without having due regard to the Regulation 21 of Information Utilities Regulations 2017 to allow the NeSL-Information Utility to verify and authenticate the details submitted by the submitter - AIPL speaks volumes about their intentions to abuse the process of the law by bringing on record an unauthenticated 'Record of Financial Information - Form C'.

8. Hence, on account of a pre-existing dispute having raised by the BSIL, the Demand Notice dated 04.09.2024 is untenable in Jaw and request you and AJPL to immediately recall I withdraw the Demand Notice dated 04.09.2024 unconditionally and formally communicate that to us forthwith. Despite the receipt of this reply if you approach the National Company Law Tribunal, you would be running the risk at your own cost and expense.”

24. Now, we come to Section 9 of the IBC. Section 9(5)(ii)(d) which is relevant for the present case is as follows:-

“9. Application for initiation of corporate insolvency resolution process by operational creditor.- (5) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-*

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;”

25. Section 9(5)(ii)(d) provides that Adjudicating Authority shall reject the application if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.

26. When we look into the reply to the demand notice, the said reply is clearly a notice of dispute sent by the Corporate Debtor to ‘Armaco Infralinks Pvt. Ltd.’. Detailed facts as stated in the reply to the demand notice clearly make the said notice as notice of dispute. The Corporate Debtor has also filed a reply to Section 9 application and in the reply, the Corporate Debtor has also pleaded that the claim is already disputed in the record of the Information Utility. It was further pleaded that the Corporate Debtor is ready and willing and capable of carrying supply of coal of Rs.16,68,29,955.66/-. In paragraph 8 of the reply, following has been pleaded:-

“8. Further, in terms of Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC", for brevity), there is an existence of a dispute as has been duly authenticated at the National e-Governance Services Limited, the Information Utility (hereinafter "NeSL-Information Utility", for brevity). A copy of the Record of Financial Information Form C in respect of the Debt Information submitted by AIPL indicating the

'Authentication Status' as DISPUTED is annexed herewith as Exhibit-A."

27. Record of Financial Information Form C as has been extracted above was also filed as Exhibit 8 of the reply to Section 9 application which clearly mentioned the status 'disputed'.

28. When we look into Section 9(5)(ii)(d) there are two circumstances under which Section 9 application deserves to be rejected i.e. (i) notice of dispute has been received by operational creditor or (ii) there is record of dispute in the Information Utility. In the present case, both the above clauses are fully met since notice of dispute has been received by operational creditor and there is record of dispute in the Information Utility. The record of dispute in the Information Utility as extracted above was information which was submitted by 'Armaco Infralinks Pvt. Ltd.' for authentication and authentication made on the same day by the corporate debtor disputing the information which is captured in the Information Utility information. The statutory condition as contained in Section 9(5)(ii)(d) was fully in existence, hence, Adjudicating Authority had to reject the application. Adjudicating Authority although in paragraph 31 has noticed the record of default in the Information Utility which paragraph 31 is as follows:-

"31. Further, upon perusal of record of default in the information utility namely National E-Governance Services Ltd. (NeSL) produced by the Respondent vide its reply dated 18.01.2025, we notice the existence of prior dispute between the parties. The relevant screenshot is reproduced hereunder:

Authentication Status				
<i>Party Name</i>	<i>Relationship</i>	<i>User Id</i>	<i>Status</i>	<i>Date and Time of Authentication</i>
<i>B.S.ISPAT LTD.</i>	<i>Debtor</i>	<i>2701316</i>	<i>Disputed</i>	<i>04/09/2024 17:04:59</i>
<i>Reason for Dispute: Pre-existing Dispute. Remarks- No default has been committed by B S Ispat Limited. Pre-existing dispute exist prior to the issuance of Demand Notice dated 04.09.2024.</i>				

29. However, even after noticing the said disputed status in the NeSL record, Adjudicating Authority has not adverted to Section 9(5)(ii)(d) and has proceeded to observe that defence of pre-existing dispute raised by the Corporate Debtor is merely a moonshine defence to cover up its failure to supply the goods against the advance which observation has been made in paragraph 37 of the order. Paragraph 37 of the impugned order is as follows:-

“37. It is pertinent to note here that this Tribunal, in a company petition no. 872 of 2023 filed by Vinayak Trading Company against the same Corporate Debtor on the ground of failure on metric tons of coal from its mines within a period of 2 years, has recorded in its Order dated 16.2.2024 passed therein that “The Applicant claims to have not received the remaining supply of 1,42,000 metric tonne of coal. It is the case of the applicant that the coal was to be supplied from Marki Mangli III, Majra and Chinora coal mines, however, the nominated authority for ministry of coal terminated the agreement for Majra and Chinora coal mines and only Marki Mangli III mine is in operation, the production capacity of which makes it impossible for the Corporate Debtor to supply it by 14.09.2024”. In

that case, the Petition was dismissed as the obligation of the Corporate Debtor to supply the goods was expiring on 14.9.2024, hence the petition was dismissed on the ground of it being pre-mature i.e. having been filed prior to last date for supply of Coal in that case. However, the fact remains that the Corporate Debtor has taken advances from more than one buyers against its commitment to supply Coal to them, however, its capacity to fulfil these obligations was undoubtedly in question. This leads to a conclusion that the defence of pre-existing disputed raised by the Corporate Debtor is merely a moonshine defence to cover up its failure to supply the goods against the advance, and the Operational Creditor is entitled to seek refund of such amount.”

30. Adjudicating Authority adverted to Section 8(2)(a) and has made following observations in paragraph 41:-

“41. The Corporate Debtor has disputed only part of the claim, and the remaining admitted amount of debt is more than threshold limit. There is no bar on adjudication of the nature of dispute, even if a dispute is reported in the record of NeSL - in terms of Section 8(2)(a) of the Code.”

31. Section 8(2)(a) is a provision which provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. Section 8(2)(a) does not in any manner

dilute the requirement of Section 9(5)(ii)(d). The initiation of insolvency against the Corporate Debtor has a serious consequences and when there are sufficient material to indicate that condition as mentioned in Section 9(5)(ii)(d) are in existence, Adjudicating Authority cannot proceed to ignore the same. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in **“Mobilox Innovations Private Limited vs. Kirusua Software Pvt. Ltd.- (2018) 1 SCC 353”** that dispute which is contemplated in Section 8(2)(a) has to be a bonafide dispute. In paragraph 38 of the judgment of **“Mobilox Innovations Private Limited”** following was laid down:-

“38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before

triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an Arbitral Tribunal or a court for up to three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties.”

32. When we look into the correspondence between the parties and e-mail sent by the Corporate Debtor on 13.08.2024 i.e. prior to issuance of demand notice, Corporate Debtor has expressed its willingness to supply of goods against the advance received. In reply to Section 9 application, the Corporate Debtor has also reiterated its willingness to supply the coal. Clause in terms and conditions as noted above that Corporate Debtor has to refund the amount with interest when it is unable to supply the goods.

33. In the present case, the Corporate Debtor has expressed its willingness to supply the goods, it cannot be said that Corporate Debtor has breached the contract. The observation of the Adjudicating Authority that defence raised by the Corporate Debtor is a moonshine defence to cover up its failure

to supply the goods against the advance also cannot be approved. In any view of the matter, requirement for rejection of Section 9 application as contemplated in Section 9(5)(ii)(d) being present, Adjudicating Authority without advertent to the said provision has admitted Section 9 application which cannot be approved. We, thus, are satisfied that the application filed by the Operational Creditor did not deserve admission and was liable to be rejected as required by Section 9(5)(ii)(d) of the IBC. Adjudicating Authority neither adverted to Section 9(5)(ii)(d) nor addressed itself to the said condition and proceeded to admit the application which order cannot be sustained.

34. In result, we allow the Appeal and set aside the order dated 26.03.2025. Amount of Rs.3 lakh directed by the Adjudicating Authority to be paid by the Operational Creditor to the Resolution Professional, if not paid be paid within two weeks.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali